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OFFICE OF PETITIONS

In re Application of :
Toronto et al. : DECISION ON PETITION
Application No. 10/785,141 : TO WITHDRAW HOLDING OF
Filed: 24 February, 2004 : ABANDONMENT
Atty Docket No. 3281.2.1.1 : :

This is in response to the petition filed on 10 June, 2005, to withdraw the holding of abandonment of the above-identified application.

This application is in an abandoned status for failure to respond in a timely and effective manner to the non-final Office action mailed on 1 November, 2004. A Notice of Abandonment was mailed on 23 May, 2005.

Petitioners assert that the non-final Office action mailed on 1 November, 2004, was not received. In the absence of any irregularity in the mailing of an Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Notice of Allowance was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt

rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the non-final Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the non-final Office action on the part of the United States Patent and Trademark Office (Office).

To support the petition, the petitioners have submitted copies of the docket records where the non-received Office communication would have been entered had it been received, and a statement from the practitioner stating that a search of the office, the application file, and docket records indicates that the Office communication was not received.

The petitioners have made a sufficient showing of non-receipt of the non-final Office action based upon the docket records submitted and upon the statements from the practitioner. Accordingly, the application was not abandoned in fact.

The petition is **GRANTED**.

The non-final Office action mailed on 1 November, 2004, is hereby vacated. The application file is being forwarded to the Technology Center's support staff for mailing of a new non-final Office action. The time period for response will be set to run from the date the new Office action is mailed.

The application file will be forwarded to Technology Center 3700 for mailing of the new Office action.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



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